

REMARKS

The present Amendment is in response to the Official Action mailed September 6, 2007. Claims 7 and 16 have been amended. Claim 6 has been previously canceled. Therefore claims 1-5 and 7-20 remain pending in the application. The following sets forth Applicants' remarks pertaining to the outstanding Action and the currently pending claims.

In the Action, the Examiner first rejected claims 1-5 and 10-15 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 7,063,725 to Foley ("Foley") and U.S. Patent No. 6,213,055 to Willinger et al. ("Willinger"). Essentially, the Examiner's posited that Foley teaches each and every one of the limitations of, for example, independent claims 1 and 10, save for at least one rib extending transversely away from the shaft longitudinally along the shaft substantially to the head. Nonetheless, the Examiner cites Willinger as teaching this limitation. This rejection was set forth despite the Examiner's indication in the previous Action that the subject matter of dependent claim 6 (which was included in independent claims 1 and 10 in the previously filed Amendment) was allowable. Applicants respectfully disagree with the Examiner's withdrawal of this indication of allowability, especially in light of the newly recited Willinger reference.

Applicants note that Willinger is directed to an ergonomic handle for a grooming brush. This is far different from the present invention which contemplates an intervertebral disc replacement trial, as well as from the subject matter of Foley. Applicants respectfully assert that the Examiner's combination of Foley and Willinger has clearly been done in hindsight, and without regard to the non-analogous nature of the two references. Moreover, Applicants are confused as to which element in Willinger the Examiner believes supports his rejections, as he does not specifically recite an element by

reference numeral in the Action. Thusly, Applicants feel as though the obviousness rejection of independent claims 1 and 10 in view of the combination of Foley and Willinger is improper, and respectfully request allowance of such claims. Given that claims 2-5 and 11-15 depend from one of allowable independent claims 1 or 10, such claims also necessarily constitute allowable subject matter.

Further in the Action, the Examiner once again rejected claims 7-9 and 16-20 under 35 U.S.C. § 103(a) as being obvious over the combination of Foley and U.S. Patent Application Publication No. 2003/0135279 to Michelson ("Michelson"). The Examiner asserted that Foley discloses each and every one of the limitations of such claims, save for a stop member operable to prevent over-insertion of the head into the intervertebral disc space of the spinal column. The Examiner cited Michelson as teaching this limitation and noted that it would have been obvious to one of ordinary skill in the art to combine Foley and Michelson to arrive at the present invention. Applicants previously argued that the Foley and Michelson references were not properly combinable. While Applicants still believe this to be the case, they have submitted further amendments to independent claims 7 and 16 above.

Specifically, such claims have been amended to require that the trial have a substantially circular shaped head having first and second spaced apart substantially circular shaped surfaces. None of Foley, Michelson, nor the combination of both teach such limitations. Furthermore, such limitations are fully supported by the originally filed specification, especially in figures 4A-4G. Thus, these amendments do not constitute new matter. Because none of the prior art cited teach these additional limitations, and because such would not have been obvious to one of ordinary skill in the art, Applicants respectfully assert that independent claims 7 and 16 constitute

allowable subject matter. Given that remaining claims 8, 9, and 17-20 properly depend from either independent claim 7 or independent claim 16, such claims also necessarily constitute allowable subject matter. Therefore, in light of all of the above, Applicants respectfully request allowance of each and every one of claims 1-5 and 7-20.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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